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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, FEBRUARY 26, 2001

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

Ex Parte: In the matter of
Adopting Revisions to the Rules
Governing Credit for Reinsurance

CASE NO. INS010028

ORDER TO TAKE NOTICE

WHEREAS, § 12.1-13 of the Code of Virginia provides that the Commission shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia;

Whereas, the rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code;

Whereas, the Bureau of Insurance has submitted to the Commission proposed revisions to Chapter 300 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Credit for Reinsurance," which amend the rule at 14 VAC 5-300-130;

WHEREAS, the proposed revisions reflect revisions to provisions of the model Credit for Reinsurance regulation

adopted by the National Association of Insurance Commissioners ("NAIC"); and

WHEREAS, the Commission is of the opinion that the proposed revisions should be considered for adoption with a proposed effective date of May 1, 2001.

THEREFORE, IT IS ORDERED THAT:

(1) The proposed revisions to the "Rules Governing Credit for Reinsurance" which amend the rule at 14 VAC 5-300-130, be attached hereto and made a part hereof;

(2) All interested persons who desire to comment in support of or in opposition to, or to request a hearing to oppose the adoption of, the proposed revisions shall file such comments or hearing request on or before March 29, 2001, in writing with the Clerk of the Commission, Document Control Center, Post Office Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS010028;

(3) If no written request for a hearing on the proposed revisions is filed on or before March 29, 2001, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed revisions, may adopt the revisions proposed by the Bureau of Insurance;

(4) AN ATTESTED COPY hereof, together with a copy of the proposed revisions, be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Douglas C. Stolte, who forthwith shall give further notice of the proposed adoption of the revisions to the rules by mailing a copy of this Order, together with a draft of the proposed

revisions, to all insurers, burial societies, home protection companies, joint underwriting associations, group self-insurance pools, and group self-insurance associations licensed by the Commission; and

(5) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (4) above.

CHAPTER 300.

Rules Governing Credit For Reinsurance.

14 VAC 5-300-130. Letters of credit qualifying for § 38.2-1316.4 credit under 14 VAC 5-300-110.

A. The letter of credit must be clean. It cannot be conditioned on the delivery of any other documents or materials. It shall contain an issue date and date of expiration and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented.

B. The letter of credit must be irrevocable. It must provide that it cannot be modified, except for an increase in face amount, or revoked without the consent of the beneficiary, once the beneficiary is established.

C. The letter of credit must be unconditional. It shall indicate specifically that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain preference to any other agreements, documents or entities, except as provided in subdivision K 1 ~~below~~.

D. The heading of the letter of credit may include a boxed section which contains the name of the applicant and other appropriate notations to provide a reference for such letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.

E. The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

F. The term of the letter of credit shall be for at least one year and shall contain an "evergreen clause" which automatically renews the letter of credit for a time certain should the issuer of the same fail to affirmatively signify its intention to non-renew upon expiry and which

prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for a period of no less than 30 days notice prior to expiry date for nonrenewal.

G. The letter of credit shall state whether it is subject to and governed by the laws of this Commonwealth, the ceding insurers state of domicile or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication ~~400~~ 500), or any successor publication, and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

H. If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication ~~400~~ 500), or any successor publication, then the letter of credit shall specifically address and make provision for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article ~~49~~ 17 of Publication ~~400~~ 500 or any successor publication, occur.

I. The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to the applicable definitions contained within § 38.2-1316.1 of the Act.

J. When a letter of credit, issued by a financial institution not recognized by the Act and this chapter as a qualified United States financial institution authorized to issue letters of credit, is subsequently confirmed by a qualified United States financial institution, as described in subsection I of this section, then the following additional requirements shall be met:

1. The issuing financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts, and

2. The "evergreen clause" shall provide for a period of no less than 30 days' notice prior to expiry date for nonrenewal.

K. Reinsurance agreement provisions.

1. The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions which:

a. Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover.

b. Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provision in such agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:

(1) To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;

(2) To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer under the terms and provisions of the policies reinsured under the reinsurance agreement;

(3) To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement (such amount shall include, but not be limited to, amounts for policy reserves, claims and losses incurred and unearned premium reserves); and

(4) To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

c. All of the provisions of subdivision 1 of this subsection should be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

2. Nothing contained in subdivision 1 of this subsection shall preclude the ceding insurer and assuming insurer from providing for:

a. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to subdivision 1 b (3) of this subsection; and/or

b. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or, in the case of subdivision 1 b (4) of this subsection, any amounts that are subsequently determined not to be due.

3. When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities and health, where it is customary practice to provide a letter of credit for a specific purpose, then such reinsurance agreement may in lieu of subdivision 1 b of this subsection, require that the parties enter into a "Trust Agreement" which may be incorporated into the reinsurance agreement or be a separate document.

L. A letter of credit may not be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the Commission unless an acceptable letter of credit with the filing ceding insurer as beneficiary has been issued on or before the date of filing of the financial statement.